IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

M.A.No. 07 /2002

APPELLANT : National Insurance
Company Ltd.
Station Road Durg ,
through its Official Signatory –
Branch Manager,
Taha Complex,Priyadarshni
Nagar,Bilaspur.

- Versus –

RESPONDENTS: 1. Shyam Sunder,
S/o Chintaram Satnami,
Aged about 35 years,
Kotwar,
R/o Village-Karali,Tehsil-Barela,
Durg.

-Claimant -

2. Kishan Lal
R/o Village-Barela,
Tehsil-Barela
Durg (C.G.)
-Owner-

3. Ramesh Kumar Sahu,
S/o Dukhu Ram Sahu,
R/o Mudpar, P.S. Ghumka,
Rajnandgaon (C.G.)
- Driver –

(5)

APPEAL UNDER SECTION 173 OF THE MOTOR VEHICLES ACT, 1988.

XI-HC-78

(31)

A.F.R.
15/2/07

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मामला क्रमांक M.A. No. 07/... **सन् 2002**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

15/02/2007

Shri Ali Asgar, counsel for the appellant/insurer.

Shri P.P. Sahu, counsel for respondents No. 1 **Shyam Sunder** (claimant) and 2 **Kishanlal** (owner).

Respondent No. 3 (driver) is absent.

Learned counsel for the parties pray that this appeal may be disposed of finally at the stage of admission.

Heard.

Brief facts are that on 1.12.1997, a Minibus bearing No. MP-24/C 2614 being driven by respondent No. 3, upon bursting of a tyre, turned turtle causing injuries to the claimant/passengers. The injured passengers/claimants preferred applications for compensation. The learned Additional Motor Accident Claims Tribunal, Bemetara passed a common order dated 3.10.2001 and awarded compensation to the victims as under:-

(a) Claimant-Shyam Sunder, Claim Case No. 1/98-[compensation awarded Rs.25,000/- with interest.]

(b) Claimant-Ramji, Claim Case No. 2/98-[compensation awarded Rs.3,000/- with interest.]

(c) Claimant-Smt. Ram Bai, Claim Case No. 14/98-[compensation awarded Rs.92,500/- with interest.]

(d) Claimant-Chhedi Singh, Claim Case No. 17/98-[compensation awarded Rs.4,000/- with interest.]

It is not disputed by the learned counsel for the appellant/insurer that the ill-fated Minibus was under a policy of insurance by the appellant on the date of the accident. The fact that the claimants mentioned above were passengers in the Mini bus and sustained injuries due to the bus

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

turning turtie and that the respondent No.3/driver had a valid driving licence for driving light motor vehicles are also not disputed. Learned counsel for the appellant also contended that the Insurance Company is willing to pay the entire compensation as awarded by the learned Motor Accident Claims Tribunal.

The only point urged by the learned counsel for the appellant in this appeal is that since Ramesh Kumar Sahu, the driver of the ill fated Minibus did not possess a valid driving licence for driving commercial vehicles or heavy motor vehicles but possessed only a valid licence to drive a light motor vehicle, the insurer had satisfactorily proved its defence in accordance with the provisions of Section-149 read with sub-Section (7) of Motor Vehicles Act, 1988 and therefore the learned M.A.C.T. ought to have granted the right to the insurer to recover from the owner of the Minibus i.e. Kishanlal, respondent No. 2 the compensation paid by it under the award.

Reliance was placed on **National Insurance Company Limited Vs. Swaran Singh & others** reported in **(2004) 3 Supreme Court Cases 297.**

On the other hand, Shri P.P. Sahu, learned counsel for respondents No. 1 & 2 i.e. the claimant and owner has argued that the accident was in no manner attributable to any negligence on the part of the driver and occurred solely due to the bursting of a tyre. It was urged that bursting of a tyre being an unforeseen cause having no nexus with the driver not possessing the requisite type of licence, the appellant/insurer could neither avoid its liability to pay compensation nor be given the right to recover the same from the owner of the vehicle. Reliance was placed on para-89 of the case law cited by the learned counsel for the appellant.

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आदेश पत्रक (पूर्वानुबद्ध)

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Having heard rival contentions, I have perused the record of Claim Case No. 1/98 and the testimony of Ramesh Kumar Sahu, the driver of the offending vehicle, (Respondent No.3) and also the testimony of claimants Shyam Sunder, Ramji, Smt. Ram Bai and Chhedhi Singh who were travelling in the ill-fated Minibus which clearly demonstrates that upon sudden bursting of tyre of the ill fated Minibus when the driver suddenly applied breaks, the Minibus turned turtle. In this view of the matter, I am of the considered opinion that the accident occurred solely due to an unforeseen cause, i.e. sudden bursting of tyre.

In National Insurance Company Limited (supra), the Apex Court has dealt with such a situation in para-89.

> "Section 3 of the Act casts an obligation on a driver to hold an effective driving licence for the type of vehicle which he intends to drive. Section 10 of the Act enables the Central Government to prescribe forms of driving licences for various categories of vehicles mentioned sub-section (2) of the said Section. The various types of vehicles described for which a driver may obtain a licence for one or more of them are: (a) motorcycle without gear, (b) motorcycle with gear, (c) invalid carriage,(d) light motor vehicle,(e) transport vehicle, (f) road roller, and (g) motor vehicle of other specified description. The definition clause in Section 2 of the Act defines various categories of vehicles which are covered in broad types mentioned in sub-section (2) of Section 10. They are "goods carriage", "heavy goods vehicle", "heavy passenger motor vehicle", "invalid carriage", "light motor vehicle", "maxi-cab", "medium goods vehicle", "medium passenger motor vehicle", "motor-cab", "motorcycle", "omnibus", "private service vehicle", "semi-trailer", "tourist vehicle", "tractor", "trailer" and "transport vehicle". In claims for compensation for accidents, various kinds of breaches with regard to the conditions of driving licences arise for consideration before the Tribunal as a person possessing a driving licence for "motorcycle without gear", [sic may be driving a vehicle] for which he has no licence. Cases may also arise where a holder of driving licence for "light motor vehicle" is found to be driving a "maxi-cab" "motor-cab" or "omnibus" for which he has no

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आदेश पत्रक (पूर्वानुबद्ध)

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licence. In each case, on evidence led before the Tribunal, a decision has to be taken whether the fact of the driver possessing licence for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of accident. If on facts, it is found that the accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with the driver not possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence".

Applying the law laid down by the Apex Court to the facts and circumstances of the case, I am of the considered opinion that although the driver of the Minibus possessed a valid driving licence only for L.M.V. and not for any commercial vehicle or mini bus, yet since the accident was not attributable to any negligence on the part of the driver/respondent No. 3-Ramesh Kumar Sahu but occurred solely due to the sudden bursting of a tyre which the owner of the vehicle was required to keep in good condition, the breach of the condition of driving licence not being fundamental did not in any manner contribute to the cause of the accident and therefore the insurer cannot avoid its liability to pay compensation and the present case is not a fit case to grant the insurer the right to recover compensation from the owner of the vehicle.

In this view of the matter, the contention of the appellant must fail. In the result, the appeal is dismissed.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Kvr